

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-30325
Issue No: 2026
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2010
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on April 14, 2010. Claimant personally appeared and testified.

ISSUE

Did the department correctly compute the amount of claimant's budgetable income for Medicaid (MA) eligibility purpose?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for MA on May 12, 2009. Department discovered that the claimant and three partners own a business together.
2. MA budgets were completed using claimant's 2008 federal tax return, Form 1065. Department determined that claimant's business gross receipts were \$2,055.775, this amount was

divided by number of business partners, divided by 12 to determine claimant's monthly income, and then the standard deduction for self-employment of 25% was used.

3. Department determined that the claimant's monthly income was \$42,928, resulting in a monthly MA deductible of over \$20,000.

4. Claimant requested a hearing on June 15, 2009.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Departmental policy states:

DEPARTMENT POLICY

All Programs

The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program-specific income deductions or disregards.

Income means benefits or payments measured in money. It includes money a person owns even if NOT paid directly such as stock dividends automatically reinvested and income paid to a representative.

Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income means all income that is NOT earned income. The item specifies whether the income is earned or unearned.

The amount of income counted may be more than the amount a person actually receives, because it is the amount before any deductions including deductions for taxes and garnishments. The amount before any deductions is called the **gross** amount.

Exception: The amount of self-employment income before any deductions is called **total proceeds**. The **gross** amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions.

Income remaining after applying the policy in this item is called **countable**.

Count all income that is NOT specifically excluded.

EMPLOYMENT INCOME

All Programs

Self-Employment

A person who runs his own business is self-employed. This includes selling goods, farming, direct services (e.g., child care or personal care services), and operating a facility that provides services (e.g., adult foster care home, room and board).

Countable Self-Employment Income

Countable earnings from self-employment equal the total proceeds **minus** allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income **except** for farm loss amounts. See "Farming Expenses" below.

Allowable expenses are the **higher** of:

- . 25% of the total proceeds, **or**
- . actual expenses if the client chooses to claim and verify the expenses.

Example: A person operates a retail store. Total proceeds for the month are \$3,200. Allowable expenses total \$3,800. The \$600 deficit CANNOT be used to offset any other income.

Allowable Self-Employment Expenses

Allow expenses include (also see “Room and Board”):

- . Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- . Interest and principal on loans for equipment, real estate or income-producing property.
- . Insurance premiums on loans for equipment, real estate and other income-producing property.
- . Taxes paid on income-producing property.
- . Transportation costs while on the job (example: fuel), but NOT routine transportation to and from work.
- . Purchase of capital equipment.
- . A child care provider’s cost of meals for children. Do NOT allow costs for the provider’s own children.
- . Any other identifiable expense of producing self-employment income **except** those listed below.

Do NOT deduct the following from self-employment income:

- . Depreciation on equipment, real estate or other capital investments
- . A net loss from a previous period
- . Federal, state and local income taxes
- . Personal entertainment or other personal business expenses
- . Money set aside for retirement. BEM 502.

Review of claimant’s federal tax return, form 1065, shows that 2 million plus that the department budgeted as income from the business partnership (divided by three even though the Hearing Summary states that the claimant and **three** partners own the business, which would mean the income must be divided by four), is the amount of gross receipts or sales. Tax return

then lists various deductions for returns and allowances, salaries, taxes and licenses, interest, repairs and maintenance, etc. Therefore, it appears that the department did not compute claimant's income from the business partnership correctly. Claimant testified that he receives \$2,000 per month in salary, however because he is part owner of the business he and his partners determine the amount of salaries they will take, and this amount would also not be accurate as self-employment income.

Department's hearing representative, a manager, agrees that the claimant should be given the opportunity to present more information regarding his income and expenses to the department. Claimant is willing to do so.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly computed the amount of claimant's budgetable income for MA eligibility purposes.

Accordingly, department's action is REVERSED. Department shall:

1. Give the claimant a Verification Checklist, DHS-3503, specifying what information regarding his self-employment income from business partnership and expenses of producing such income are needed to compute MA eligibility.
2. Compute a new MA budget if the claimant provides requested information.
3. Notify the claimant in writing of this determination.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 19, 2010

Date Mailed: April 19, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed under the 'cc:' field.